

BEFORE THE BOARD OF PERSONNEL APPEALS

THE STATE OF MONTANA, BY AND THROUGH
MICHAEL G. BILLINGS, DIRECTOR, OFFICE
OF BUDGET & PROGRAM PLANNING, STATE OF
MONTANA, AND ROBERT H. MATTSON, DIRECTOR
DEPARTMENT OF INSTITUTIONS, STATE OF
MONTANA,

Complainants

VS-

INDEPENDENT UNION OF WARM SPRINGS STATE
HOSPITAL AND ITS OFFICERS, LARRY ADAMS, PRESIDENT:
MIKE BEAUSOLEIL, VICE PRESIDENT; BARI PAINTER,
SECRETARY: AND JOAN DULANY, TREASURER,

Defendants,

and

INDEPENDENT UNION OF WARM SPRINGS STATE HOSPITAL,
AND ITS OFFICERS, LARRY ADAMS, PRESIDENT; MIKE
BEAUSOLEIL, VICE PRESIDENT; BARI PAINTER, SECRETARY
AND JOAN DULANY, TREASURER,

Complainants,

VS-

DEPARTMENT OF INSTITUTIONS, STATE OF MONTANA,

Defendants.

I. STATEMENT OF CASE

The State of Montana filed an unfair labor practice charge against the Independent Union of Warm Springs State Hospital on November 21, 1975 alleging violation of Section 59-1605(2)(b), R.C.M. 1947 by refusing to bargain in good faith. Specifically the State of Montana alleged that the union violated the collective bargaining statute by refusing to negotiate the "recognition" clause. The union filed an answer on December 4, 1975 denying the charge. The union in its answer affirmatively alleged that Michael G. Billings, Director of the Office of Budget and Program Planning did not have standing to file a complaint because he is not the defendants employer under the laws of the State of Montana.

On December 15, 1975 the Independent Union at Warm Springs State Hospital filed an unfair labor practice charge against the Department of Institutions on behalf of Warm Springs State Hospital alleging violation of

1 Section 59-1605(1)(e), R.C.M. 1947. Specifically the union alleged that the
2 employer violated the collective bargaining statute by insisting upon the
3 negotiation of the size of the appropriate bargaining unit. The union further
4 alleged that Michael G. Billings Director of the Office of Budget and Program
5 Planning is not the employer under the applicable statute. The union further
6 alleged that the employer has violated Section 59-1605(1)(a) by attempting
7 to interfere with, restrain and coerce employees who are proper members of
8 the designated union. The Department of Institutions through its director
9 Robert H. Mattson answered the charge on January 8, 1976, stating that he
10 was not the proper party to answer the charge and that the charge was improp-
11 erly filed in that it should have been filed against the Director of the
12 Office of Budget and Program Planning.

13 On February 18, 1976, the intervenor Michael G. Billings, Director of the
14 Office of Budget and Program Planning, answered the charge denying the allega-
15 tions and alleged that the Independent Union is guilty of an additional unfair
16 labor practice charge in accordance with Section 59-1605(2)(a), R.C.M. 1947
17 by virtue of their persistent attempts to "restrain and coerce" the public
18 employer State of Montana in its selection of a representative for collective
19 bargaining purposes. The hearing on these charges was held March 22, 1976,
20 before the Board of Personnel Appeals. Said hearing was conducted in accordance
21 with the provisions of the Administrative Procedures Act (Section 82-4201 to 82-
22 4205, Revised Codes of Montana 1947).

23 After thorough review of the entire record of the case, including sworn
24 testimony, evidence and briefs, we make the following:

25 II. FINDINGS OF FACT

26 1. The Independent Union of Warm Springs State Hospital is the exclusive
27 representative for certain employees at that Institution by virtue of a
28 representation election conducted by the Department of Labor and Industry on
29 July 17, 1969.

30 2. Contract negotiations between the State of Montana and the Independent
31 Union at Warm Springs State Hospital were opened in December 1974 for a
32 contract expiring on January 1, 1975.

1 3. Subsequent negotiations were held on July 16, 1975, October 23, 1975,
2 November 5, and 20, 1975.

3 4. Article I of the previous collective bargaining agreement between
4 the above mentioned parties states:

5 When new classifications or reclassifications are initiated by
6 Management and are not clearly exempt by virtue of other Union
7 Affiliation or by categorization as an Executive, Professional
8 or Administrative position, Management agrees to notify the
9 Union of said action and mutually negotiate the jurisdiction.

10 5. The July 16, 1975 meeting was spent in discussing positions described
11 in Article I of the contract. The union refused to negotiate Article I for
12 "recognition" during the November 5 and 20 sessions.

13 6. The union contends that they are required by law to represent the
14 interest of all members in the bargaining unit, this precludes them from
15 negotiating exclusions from the bargaining unit.

16 7. The employer contends that the only way it can make changes in the
17 bargaining unit is through the negotiation process since the Board of Personnel
18 Appeals' rules preclude the employer from filing a petition for unit modifi-
19 cation.

20 8. The union admitted during the course of the hearing that the collec-
21 tive bargaining statute provides that the chief executive of a jurisdiction
22 or his designee shall represent the public employer in negotiation with
23 exclusive representatives. Thus the union recognizes the right of Mr.
24 Michael Billings, Director, Office of Budget and Program Planning to represent
25 management in negotiations at Warm Springs State Hospital. Neither the union
26 or management presented evidence on this matter at the hearing.

27 III. DISCUSSION

28 A review of the arguments and briefs submitted in this matter indicate
29 that the course of negotiations entered into between the two parties was less
30 than model and involved a great deal of harassment on the part of both
31 parties. We especially want to impress upon the management negotiators
32 that this Board has every intention of protecting the statutory rights of
the Independent Union to represent employees at Warm Springs State Hospital.
We also want to remind the union negotiators that the collective bargaining

1 statute allows the Chief Executive Officer of the political sub-division or
2 his designee to represent the jurisdiction at the bargaining table.

3 After much deliberation we find that negotiation of a "recognition
4 clause" is a permissible subject of collective bargaining. Further, we find
5 the only solution which would be equitable to all parties involved is a
6 dismissal of the resulting unfair labor practice charges. Under other cir-
7 cumstances, however, we might easily find both parties in violation of the
8 collective bargaining statute.

9 IV. CONCLUSIONS OF LAW

10 The allegations of unfair labor practices #20 and #21 have not been
11 sustained.

12 V. ORDER

- 13 1. Unfair labor practice charges #20 and #21 are dismissed.
14 2. Both parties are to immediately return to the bargaining table and
15 resume negotiations.

16 Dated this 30th day of June, 1976.

17 BOARD OF PERSONNEL APPEALS

18 BY Brent Cromley
19 Brent Cromley, Chairman